

**78A-6-1303 Disposition on finding of incompetency to proceed -- Subsequent hearings -- Notice to prosecuting attorneys.**

- (1) If the court determines that the minor is not competent to proceed, and there is a substantial likelihood that the minor may attain competency in the foreseeable future, the court shall notify the Department of Human Services of the finding, and allow the department 30 days to develop a six month attainment plan for the minor.
- (2) The attainment plan shall include:
  - (a) any services or treatment the minor has been or is currently receiving;
  - (b) any additional services or treatment the minor may require to attain competency within the six month time period;
  - (c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;
  - (d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and
  - (e) the likelihood that the minor will attain competency in a six month period.
- (3) The department shall provide the attainment plan to the court, prosecutor, defense attorney, and guardian ad litem at least three days prior to the competency disposition hearing.
- (4) During the attainment period, the minor shall remain in the least restrictive appropriate setting.
  - (a) A finding of not competent to proceed does not grant authority for a court to place a minor in the custody of the department or any of its divisions, or create eligibility for services from the Division of Services for People With Disabilities.
  - (b) If the court orders the minor to be held in detention or placed outside of the home of the parent or guardian during the attainment period, the court shall make the following findings on the record:
    - (i) the placement is the least restrictive setting;
    - (ii) the placement is in the best interest of the minor;
    - (iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and
    - (iv) the placement is necessary for the safety of the minor or others.
- (5) If the minor is held in detention pending placement in a less restrictive setting, the department shall locate and transfer the minor to the alternative placement within 14 days.
- (6) The court shall review the case at least once every three months to determine whether the placement is still the least restrictive appropriate placement.
- (7) At any time that the minor becomes competent to proceed during the attainment period, the executive director of the Department of Human Services, or its designee, shall notify the court, prosecutor, defense attorney, and guardian ad litem. The court shall hold a hearing with 15 business days of notice from the executive director.
- (8) If at any time during the attainment period the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.

- (9) During the attainment period, the court may order a hearing or rehearing at anytime on its own motion or upon recommendation of any interested party or the executive director of the Department of Human Services.
- (10) At the conclusion of the attainment period, the department shall provide a report on the minor's progress towards competence. The report shall address the minor's:
  - (a) compliance with the attainment plan;
  - (b) progress towards competency based on the issues identified in the original competency evaluation;
  - (c) current mental disorder, intellectual disability, or related condition and need for treatment, if any; and
  - (d) whether the minor has attained competency, or the likelihood of the minor attaining competency and the amount of time necessary to attain it.
- (11) The court on its own motion, or upon motion by either party or by the executive director, may order an updated juvenile competency evaluation to examine the minor and advise the court on the minor's current competency status and progress toward competency restoration.
- (12) Within 30 days of receipt of the report, the court shall hold a hearing to determine the minor's current status. At the hearing, the burden of proving the minor is competent is on the proponent of competency. The court shall determine by a preponderance of the evidence whether the minor is competent to proceed.
- (13) If the minor has not attained competency after the initial six month attainment period but is showing reasonable progress towards attainment of competency, the court may extend the attainment period up to an additional six months.
- (14) If the minor does not attain competency within one year after the court initially finds the minor not competent to proceed, the court shall terminate the competency proceedings and dismiss the delinquency charges without prejudice.

Enacted by Chapter 316, 2012 General Session